

***United States Court of Appeals
for the Second Circuit***



**SUPPLEMENTAL
APPENDIX**

ORIGINAL

77-4019

United States Court of Appeals
FOR THE SECOND CIRCUIT

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

v.

LOCAL 259, UNITED AUTOMOBILE, AEROSPACE,
AND AGRICULTURAL IMPLEMENT WORKERS
OF AMERICA,

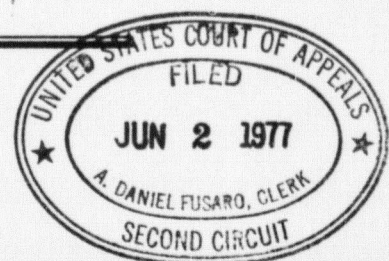
Respondent.

SUPPLEMENT TO APPENDIX

CROSSIN & CROSSIN
Attorneys for Intervenor
65 Prospect Avenue
Larchmont, New York 10538
(914) 834-5441

Of Counsel:

WILLIAM J. CROSSIN
WALTER J. KENNEY, JR.



PAGINATION AS IN ORIGINAL COPY

I N D E X *

ORIGINAL TRANSCRIPT PAGE	APPENDIX PAGE
10.....	173
13.....	174
26.....	175
95.....	176
132.....	177
202.....	178

* IN OUR ORIGINAL BRIEF INTERVENOR CITED TO THE ORIGINAL
TRANSCRIPT WITHOUT HAVING THE BENEFIT OF THE APPENDIX,
THE ABOVE PAGES WERE NOT INCLUDED IN THE ORIGINAL APPENDIX
AND ARE HEREBY SUPPLIED BY INTERVENOR.

1 During that period of time Mr. Dazzo disciplined
2 various employees, terminated the employment of various
3 employees, including the employment of Edward Zegilla,
4 who is a member of the Local 259 organizing committee,
5 that he made various changes in the service area, all
6 of which became a bone of contention among the men.

7 Following the election on January 17, 1975, which
8 was a Friday, on the next Monday representatives of the
9 union, Mr. Salvatore and Mr. Elliot confronted Mr. Dazzo,
10 as a service manager, they came to him the first instance
11 to adjust their grievances.

12 They wanted Mr. Dazzo to put back the men that
13 were laid off and to rescind some of the changes.

14 Mr. Dazzo refused.

15 Thereafter they went to Mr. Atherton with the same
16 request. However, before going, as will be testified to
17 by witnesses that general counsel will call, pursuant
18 to Rule 611, that Mr. Salvatore said to Mr. Dazzo.
19 "Well, this is war."

20 We declare war on Mr. Dazzo.

21 Thereafter negotiations commenced. During the
22 course of negotiations the main topic brought up was the
23 fact that Mr. Dazzo was too hard on the employees, he
24 harassed the employees.

25 Mr. Dazzo became the vocal point of various employees

1 JUDGE LIEBERMAN: If I should find that the
2 allegations of the complaint are substantiated by the
3 evidence, what relief are you proposing, would you
4 propose?

5 MR. WEINRICH: Well, primarily, your Honor, and
6 affirmatively, general counsel will propose that Mr. Dazzo
7 be made whole by payment to him of back pay by Local 259
8 from the date of his termination until such time that
9 Local 259 effectively communicates to the employer that
10 it does not have any objection to the continued
11 employment of Mr. Dazzo.

12 We would also require as part of the request, as
13 part of the affirmative order that such a statement be
14 made by the union to the employer.

15 We would also request that the union be ordered
16 to cease and desist from engage in such conduct in the
17 future.

18 JUDGE LIEBERMAN: I'll hear you, Mr. Schnipper.

19 MR. SCHNIPPER: The outline of certain dates that
20 Mr. Weinrich has given in his opening statement are
21 correct.

22 There was an election on January 17. Prior to the
23 election and following the election certain actions were
24 taken by Mr. Dazzo, as general service manager, about
25 which the employees were not happy.

1 JUDGE LEIBERMAN: Do you want that stricken,
2 Counsel?

3 MR. WEINRICH: Yes, it is immaterial, I would ask
4 that it be stricken.

5 JUDGE LEIBERMAN: Motion granted.

6 Q Do you recall being present when Mr. Dazzo on
7 the day of the election sent an employee out to do a
8 task and Mr. Salvatore in your presence protested that
9 action to Mr. Dazzo?

10 A I wasn't there when Mr. Salvatore protested. I was
11 informed that he was going to protest it.

12 JUDGE LEIBERMAN: Who informed you?

13 THE WITNESS: We asked the committee if everybody was
14 here and they said that one of the fellows was on the
15 road.

16 Like I said, the board agent was late and I went
17 up to call when the service manager sent the guy.

18 Lou went up to talk --

19 JUDGE LEIBERMAN: Lou who?

20 THE WITNESS: Lou Salvatore -- he went up to talk
21 to Dazzo to find out whether he would be back in time --

22 JUDGE LEIBERMAN: What I want to know is who
23 informed you there would be a protest?

24 THE WITNESS: The committee informed me that one
25 of the fellows was missing.

1 Q What time was your conversation with Mr.
2 Zegilla?

3 A About three o'clock.

4 Q Did you have occasion to speak with either Mr.
5 Zegilla or Mr. Elliot on that day?

6 A Yes, sir.

7 I spoke to Mr. Salvatore. I had directed two men
8 to deliver an automobile over to Brightwaters, which was
9 about a 15 minute round trip drive, this was about a
10 quarter to four.

11 Mr. Salvatore stopped them and told them they
12 couldn't go. The men came in and reported to me that
13 Mr. Salvatore told them they couldn't make the delivery.

14 I went out and told Mr. Salvatore, why did he
15 stop the men?

16 He said the election was at four o'clock and the
17 men wouldn't be back in time to vote.

18 I told Mr. Salvatore, let me be the judge of when
19 the men will be back and what time they will be back.

20 Mr. Salvatore told me if the men were not back
21 in time to vote I will be liable to a \$10,000 fine.

22 I said, let me worry about it if the men aren't
23 back in time I will take the \$10,000 fine.

24 The men were back in time to vote.

25 Q On the day following the National Labor Relations

1 JUDGE LIEBERMAN: How did you happen to send
2 your resume to a post office box, how did that come about?

3 THE WITNESS: Because I was unable to get a job
4 and I sent out about 85 resumes, your Honor.

5 JUDGE LIEBERMAN: How do you know that this particular
6 post office box --

7 MR. SCHNIPPER: I ask that that answer be struck
8 as not responsive.

9 JUDGE LIEBERMAN: Well, there is no jury here.
10 How did you know to send a resume to this particular
11 post office box?

12 THE WITNESS: It was in the paper and I answered.

13 JUDGE LIEBERMAN: You saw an ad?

14 THE WITNESS: I saw an ad and I answered all the
15 advertisements in the paper.

16 MR. SCHNIPPER: Let me have this marked as
17 Respondent's Exhibit 2 for identification.

18 (Document was marked as
19 Respondent's Exhibit 2 for
20 identification)

21 MR. SCHNIPPER: Could we go off the record?

22 JUDGE LIEBERMAN: For what purpose?

23 MR. SCHNIPPER: For stipulations.

24 JUDGE LIEBERMAN: Yes.

25 Off the record.

(Discussion off the record)

1 whereupon,

2 ROBERT MC DONALD

3 having been previously sworn, was examined and testified
4 further as follows:

5 REDIRECT EXAMINATION

6 Q (By Mr. Schnipper) Mr. McDonald, how long did
7 you say you have been employed at Atherton Cadillac?

8 A Nine years.

9 Q In that time how many service managers have there
10 been at Atherton?

11 A Roughly five or six.

12 Q Can you name them?

13 A George Bender, Jim Murphy, Ron Bailey, Tony Dazzo,
14 Ernie Barter.

15 I think that was it.

16 Q And the current one?

17 A And Frank Peppini, the service manager now.

18 Q Were there any interim people?

19 A Assistant service managers, I think there were two
20 of those.

21 Q Have you ever been offered any service manager's
22 job?

23 A Night service manager, I was.

24 Q When was that?

25 A It was two weeks after Tony got the job.

National Labor Relations Board
Petitioner

v.

Local 259, United Automobile Aerospace and
Agricultural Implement Workers of America
Respondent

State of New York, County of New York, ss.:

Raymond J. Braddick,
agent for Elliott Moore Esq.

, being duly sworn deposes and says that he is
the attorney

for the above named Intervenor

herein. That he is over

21 years of age, is not a party to the action and resides at 11 Park Place New York

That on the 31st. day of May, 19 77, he served the within
Supplement to Appendix and Reply Brief of Intervenor

upon the attorneys for the parties and at the addresses as specified below

1. Hon. Samuel M. Kaynerd, Director Region 29, National Labor Relations Board
16 Court Street, 4th. Floor Brooklyn, New York
2. Elliott Moore Esq, Deputy Associate General Counsel
National Labor Relations Board
1717 Pennsylvania Avenue N.W.
Washington D.C.

by depositing 1 Supplemental Appendix and 2 Reply Brief of Intervenor
to each of the same securely enclosed in a post-paid wrapper in the Post Office regularly main-
tained by the United States Government at
90 Church Street, New York, New York
directed to the said attorneys for the parties as listed above at the addresses aforementioned,
that being the addresses within the state designated by them for that purpose, or the places
where they then kept offices between which places there then was and now is a regular com-
munication by mail.

Sworn to before me, this 31st.

day of May, 19 77

Roland W. Johnson
ROLAND W. JOHNSON,

Notary Public, State of New York
No. 4509705

Qualified in Delaware County
Commission Expires March 30, 1979

Raymond J. Braddick

United States Court of Appeals for The Second Circuit

~~NEW YORK SUPREME COURT APPELLATE DIVISION~~~~DEPARTMENT~~

National Labor Relations Board
Petitio nr

v.

Local 259, United Automobile Aerospace and Agricultural Implement
Workers of America,

AFFIDAVIT
OF SERVICE

STATE OF NEW YORK,

COUNTY OF NEW YORK, ss:

Raymond J. Braddick, agent for Walter Kenney Esq.

being duly sworn,

deposes and says that he is over the age of 21 years and resides at
11 Park Place New York, New York

That on the 31st. day of May 1977 at

he served the annexed
1. Supplemental Appendix
2. Reply Brief of Intervenor

upon

Richard Dorn Esq.
c/o Speiser Weinstock Harper Dorn & Liebowitz
380 Madison Avenue
New York, New York

in this action, by delivering to and leaving with said attorneys
1 Supplemental Appendix and 2 Reply Briefs of Intervenor

~~true copy thereof~~

DEPONENT FURTHER SAYS, that he knew the person so served as aforesaid to be the
person mentioned and described in the said action

Deponent is not a party to the action.

Sworn to before me, this 31st.

day of May 1977

ROLAND W. JOHNSON

Notary Public, State of New York

No. 4509705

Qualified in Delaware County

Commission Expires March 30, 1977